

PLANNING COMMITTEE

19 APRIL 2011

REPORT OF THE TEMPORARY HEAD OF PLANNING

A.3 MANNINGTREE AND MISTLEY CONSERVATION AREA MANAGEMENT PLAN (CAMP) – JUDICIAL REVIEW

1.0 Introduction

1.1 Members will be aware that the Council has a programme of preparing Conservation Area Management Plans (CAMP) working in partnership with Town and Parish Councils for the twenty conservation areas within the district. To date six have been formally adopted and a further one is in the course of preparation during 2011. Further CAMPs are planned for future years as resources become available and the opportunity arises.

1.2 The Manningtree and Mistley CAMP was prepared and adopted in August 2010 following a consultation exercise. The decision to adopt this CAMP was made on the 17th August 2010 by Councillor Guglielimi the Planning Portfolio Holder in accordance with Council constitution and procedures. A copy of the adopted Manningtree and Mistley CAMP can be found on the Councils website through the following web link <http://www.tendringdc.gov.uk/NR/rdonlyres/E2CC4D5E-71C4-4C64-87E2-A2A9BD410758/9328/MistleyMannningtreeCAMPDraft6July2010.pdf>

1.3 The decision to adopt this CAMP has been being challenged by T W Logistics Limited (TWL) the Mistley Quay port operator in the High Court by way of judicial review proceedings.

2.0 Background

2.1 TWL in their claim for judicial review essentially claim that the decision to adopt the Mistley and Manningtree CAMP was unlawful for five reasons which very briefly can be summarised as follows:-

- (a) The CAMP is inconsistent with policies in the Tendring District Local Plan (2007) particularly Policy LMM1.
- (b) The Council have failed to either properly understand or take into account their objections or to provide rational response to their objection.
- (c) The Council through its Officers led TWL to believe that they would be re-consulted prior to adoption.
- (d) The Council should have prepared the CAMP in tandem with the supplementary planning document (SPD) for Mistley.
- (e) That it was wrong for Councillor Guglielimi, the portfolio holder to make the decision to adopt as he had been a long standing opponent of port uses and as a consequence there was a real risk of a perception of bias or him having pre-determined the decision.

2.2 Your officers have instructed solicitors and Counsel following receipt of the Court papers for judicial review. It is believed that the Council has good grounds for opposing each and every claim made. The necessary papers have therefore already been filed with the High Court. However,

notwithstanding the firm belief that TWL's claim will be unsuccessful, it is considered in all the circumstances expedient for Members to be appraised of the current situation and to look again for the avoidance of doubt at the grounds of challenge identified as grounds (b), (c) and (e) above. This is on a strictly without prejudice basis.

- 2.3 The purpose of this report is to afford the Planning Committee the opportunity to look again at the issues raised by TWL and the officers response to these. It should be noted that this further review is only being given to the TWL responses accepting that a number of other individuals and organisation also raised issues which were taken into account in the revised CAMP adopted in August 2010.

3.0 Failure to properly consult

- 3.1 A draft of the proposed Manningtree and Mistley CAMP was published for consultation purposes on the 19 January 2010. A press release was issued and all the documentation (including the questionnaire) was posted on the Council's Website. In addition an exhibition of the CAMP was mounted in Manningtree Library and later at Manningtree Methodist Church. Your officers and the consultant appointed to prepare this work (The Conservation Studio) were in attendance on two separate occasions at those venues. The public were requested to express their views either by completing a questionnaire or in writing by no later than 16 February 2010. TWL duly responded by letter dated 16 February 2010 which was sent to The Conservation Studio and a copy of that letter is attached at Appendix A.

- 3.2 Members are now requested to look at the entire representation but in summary TWL's observations are submitted under the following headings:-

- (1) The Industrial Character of the West Quay
- (2) Buildings that detract from the character of the area: Recommendation 9
- (3) As to Paragraph 7.8: Key Projects
- (4) Open Spaces: Recommendation 11
- (5) Opportunities for Enhancement/Purple Wash: Paragraph 6.53
- (6) Boundary Treatments: Recommendations 16 and 17, Purple Wash
- (7) Traffic Management and Parking: Recommendation 21
- (8) Policy and Guidance
- (9) Boundary review
- (10) Article 4 Direction Recommendations 5-7

- 3.3 The Councils consultant prepared a response to this and other objections which was made available to Planning Portfolio Holder prior to formal adoption with the Officer Report. A more detailed appraisal of TWL's representations has now been prepared. This is set out in Appendix B to this report. In summary the Officer's views expand upon the original summary responses prepared by the consultant and cover all of the ten points made above.

- 3.4 It is not believed that Officers have either failed to consider this objection, or to properly understand it and have provided a meaningful response. Members are nevertheless asked to consider the position.

4.0 Failure to re-consult

- 4.1 The Conservation Studio met with representatives of TWL during the preparation of the CAMP. No further meetings were held with TWL, or indeed any other party, to discuss the CAMP prior to its formal adoption. Officers reject any assertion that they gave a commitment to continue with consultations indefinitely in any way whatsoever.
- 4.2 However, with a view to ensuring that all TWL's objections or comments are properly considered, they have been notified of Officers intentions to refer this matter to the Planning Committee on 19 April 2011 and have been invited to make any further representations. No further representations have been made by TWL.

5.0 Bias/Pre-determination

- 5.1 TWL essentially claim that the decision to adopt the CAMP should not have been taken by the Planning Portfolio Holder Councillor Guglielmi, as he had been a long standing opponent of port uses in this area and as a consequence therefore there was a real risk of either a perception of bias or him having pre-determined matters. Councillor Guglielmi was provided with a detailed report from Officers, which included reference to the various objections prior to him making the decision to adopt the CAMP. Further, he considered the matter on an objective basis and totally denies any suggestions of bias or pre-determination. If necessary, therefore, this element of the claim will be strongly contested at any further Court hearing.
- 5.2 Whilst Officers firmly believe that Councillor Guglielmi reached his decision on an objective basis, nevertheless officers have been advised that it would be expedient for this Committee to re-consider matters.

6.0 Conclusions

- 6.1 Planning Committee are therefore asked to fully consider all the representations made by TWL to the Manningtree and Mistley CAMP. The committee can decide to either:-
- (a) Endorse the adoption of the CAMP by the Planning Portfolio Holder: or
 - (b) In accordance with the constitution to recommend to the Cabinet as the decision making body to reconsider the Portfolio Holder decision in relation to the CAMP.

7.0 RECOMMENDATION

- 7.1 That the Planning Committee reaffirms the decision of the Planning Portfolio Holder to adopt the Manningtree and Mistley Conservation Area Management Plan made on the 17 August 2010.

**Officer's response to TWL's representations on
Draft Manningtree and Mistley CAMP (January 2010)**

1. The industrial character of the West Quay

It is fully recognised that this part of the Conservation Area exhibits an industrial character. Indeed, the quayside contains both historic industrial buildings and the more recently constructed warehouse buildings from the 1930's/1950's (Thorn Quay Warehouse) and the later Stockdale Warehouse. However, as mentioned in the CAMP the Council has to balance this with the effect it has on the planned Georgian settlement containing numerous listed buildings and the Mistley Towers Scheduled Monument and its setting.

TWL suggested that the Crisp Maltings site had been treated differently from the Stockdale and Mistley Thorn warehouses.

Although there is no change between paragraph 6.20 of the draft and paragraph 6.22 of the adopted CAMP, the change referred to in the Report of Consultation is made earlier. The "offending" sentence suggesting that the modern silos could be seen as a natural successor was removed from paragraph 6.7:

Draft version paragraph 6.7:

2. The Crisp (formerly Simpsons) maltings site south of the railway at Mistley. There have been suggestions that this area should be removed from the conservation area. On one hand, it is occupied by modern structures that do not accord with the prevailing architecture of the conservation area. On the other hand, however, its modernity can be seen as a natural progression from the historic maltings which so shaped the economic development of Mistley.

Adopted version paragraph 6.7:

2. The Crisp (formerly Simpsons) maltings site south of the railway at Mistley. There had been suggestions that this area should be removed from the conservation area because it is occupied by modern structures that do not accord with the prevailing architecture of the conservation area. There was definite support for retaining this area largely because it would facilitate the inclusion of School Wood (See 4 below). This area will not, therefore, be removed."

2. Buildings that detract from the character of the area: Recommendation 9

The Planning Authority has a duty to preserve or enhance the Conservation Area and therefore the recommendation simply provides encouragement for sympathetic redevelopment of buildings in the future as and when development proposals come forward. It will be for the Planning Authority to determine at the time which buildings have a negative effect on the Conservation Area and whether redevelopment is appropriate.

The reference to the Crisp Maltings has been included above.

In no stretch of the imagination does Recommendation 9 become a development plan policy.

3. As to Paragraph 7.8: Key Projects

When the Draft CAMP was prepared The Conservation Studio (TCS) were fully aware of EDME's proposals for that site (the main site and the TQW). However, nothing in the CAMP challenges the development plan policy (specifically LMM1 (iv)). Indeed TWL have inaccurately interpreted this part of the policy by suggesting it acts as a "safeguarding" policy on the future of the TQW only being suitable for port use. This is not the case. Port use of the building has to be considered when development proposals come forward for the TQW. The CAMP simply provides a basis for this consideration.

4. Open Spaces: Recommendation 11

The open space land within the curtilage of the converted Listed Maltings No. 1 is shown to be a 'significant open space' on the Townscape Appraisal Map. Clearly the CAMP has to address open spaces and spaces around buildings as well as the buildings themselves. In this regard the CAMP quite rightly recommends that appropriate enhancement of this open space be sought. This is one of the purposes of preparing such Management Plans. Proposals would be subject to detailed consideration as to the design and choice of materials as well as how and when such enhancement works could be carried out.

5. Opportunities for Enhancement/Purple Wash: Paragraph 6.53

This particular response raises a number of points of detail in relation to enhancement opportunities and the subsequent development of specific enhancement proposals.

The first bullet point deals with The Towers and its setting. This is an important designated heritage asset, a Scheduled Monument whose setting needs careful consideration. Enhancement of the setting needs to be an important consideration in the CAMP whether it is the immediate site and setting or wider townscape setting within the Conservation Area. Any long term development proposals in the vicinity of The Towers need to be designed to take into account the need to safeguard and enhance its setting.

Bullet point 2 refers to the future enhancement of the Swan Basin which is the centrepiece of the original Georgian Spa town. The suggestions about future enhancement works does not envisage any alterations or interference with these points of access to the quay. The details of any enhancement scheme will need to take all relevant matters into account in relation to access considerations and how to treat the areas of public realm and open spaces in this part of the conservation Area.

Bullet point 5 refers to the main EDME site and the urban design objective of strengthening the high street frontage of the site. This concept does not mean that access to the site should be blocked off. Discussions are ongoing with EDME over a master plan for the EDME site which includes consideration of the frontage buildings, all of which are of historic interest and the future of the Grade II Listed Maltings No. 2 recently re-roofed by the owners. The reference in the Draft to entrances has been changed to "gaps".

Bullet point 7. A suggestion that the quayside area to the rear of the Grape Vine Cottages should be included as an area in need of enhancement has been accepted. The reference to a barrier being necessary at the edge of the quay is important as a basis for establishing a dialogue for the discussions over the type and style of fencing bearing in mind the barrier's negative impact on the Conservation Area.

6. Boundary Treatments: Recommendations 16 and 17, Purple Wash

TWL defends the quayside fence as an industrial/operational response to an industrial character and the prevalent risks. Clearly, the Council needs to take this into account but has also to balance this with the wider character and appearance of the Conservation Area and also the strength of views that have been expressed both before, during and after the consultation exercise. The Recommendation states that every opportunity should be sought to seek a more sympathetic design solution. The Council is therefore actively seeking to engage with TWL over the fence and how this matter can be progressed in the light of the duty to preserve or enhance the character or appearance of the Conservation Area. Meetings with TWL to discuss this issue are being sought by the Council.

7. Traffic Management and Parking: Recommendation 21

Concerns are raised by TWL about any reduction in accesses to the High Street from the Quay. Highway access is clearly a matter for future consideration in the context of any development proposal. The CAMP simply provides a context for such future consideration and clearly any such consideration will be based on the existence of the operational port.

8. Policy and Guidance

The text 6.50 -6.52 and Recommendation 25 do not relate.

It is fully recognised that the CAMP needs to reflect existing development plan policy and should not conflict with such policy. The CAMP is not a policy document as it is prepared under quite separate legislation, the Planning (Listed Buildings and Conservation Areas) Act 1990.

9. Boundary Review

The extension of the conservation area to include the remaining 'slice' of Baltic Wharf and the extension beyond to include the adjoining Northumberland Wharf is welcomed albeit the former area's inclusion is apparently "not clear" to TWL. TWL specifically states that "The port would welcome a designation which seeks to conserve the character of Northumberland Wharf as a site of marine industry with a long heritage".

There is clearly considerable merit in extending the Conservation Area in the area as part of the wider boundary review.

The existing boundary follows a seemingly arbitrary line cutting across Baltic Wharf. A much more logical line is along Anchor Lane to the corner of Baltic Wharf. However, the extension further eastwards is justified as it contains the historic railway loop that once served the Quay as well as the surviving elements of the former coal importing and barge building area.

Various detailed points about this site are also made which are helpful and will need to be taken into account in the consideration of the future of Northumberland Wharf.

10. Article 4 Direction Recommendations 5-7

Here, there was an understandable fear that extending the small existing Article 4 direction to address the whole conservation area might adversely affect the interests of the port. The Report of Consultation says that amendments have been made to make it clear that the direction would be aimed at dwellings. This can be seen in the addition of 'to domestic property' in the second line of paragraph 6.18:

Draft version:

"6.16 An existing Article 4 Direction covers a small part of Mistle to bring some of these changes within the control of the planning system. However, this is of limited effect in relation to the conservation area as a whole. It is recommended, therefore, that the direction is re-cast to cover the full extent of the conservation area."

Adopted version:

"6.18 An existing Article 4 Direction covers a small part of Mistle to bring some of these changes to domestic property within the control of the planning system. However, this is of limited effect in relation to the conservation area as a whole. It is recommended, therefore, that the direction is re-cast to cover the full extent of the conservation area."

This is a small change, but it does make it clear that the existing direction relates to domestic property and, by implication, that the extension of the direction to the whole conservation area would be similarly related to domestic property.

The kinds of development giving rise to concern are already suggested in paragraph 6.17. They are clearly domestic:

Such changes include the replacement of front doors and windows with plastic 'imitations', changing roof materials, the loss of chimneystacks, painting over brickwork or constructing obtrusive porches and boundary walls.

It is then confirmed in paragraph 6.19 that (to achieve the desired effect):

An Article 4 Direction applies to houses in single occupancy. Where houses are divided into flats or where buildings are in other uses, such as shops and offices, the controls already exist.

Nowhere was it suggested that the permitted development rights enjoyed by the port use might be an issue (other than perhaps the fence). Nor was there any suggestion that the scope of the existing Article 4 direction should be changed other than geographically.

This objection has been met.

Background Papers.

None.